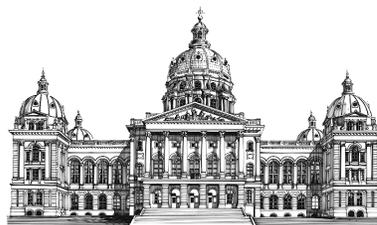

Iowa Legislative Fiscal Bureau

Dennis Prouty
(515) 281-5279
FAX 281-8451



State Capitol
Des Moines, IA 50319
July 9, 2001

Visitation and Custody Mediation

ISSUE

This *Issue Review* will address the current practices and issues surrounding visitation and custody mediation in the Department of Human Services and the Judicial Branch.

AFFECTED AGENCIES

Department of Human Services
Judicial Branch

CODE AUTHORITY

Chapter 598.7A, Code of Iowa
Chapter 598.35, Code of Iowa
Chapter 679C, Code of Iowa
28 USC §1738A

BACKGROUND

The definition of mediation according to Chapter 679C, Code of Iowa, is a process in which an impartial person facilitates the resolution of a dispute by promoting voluntary agreement of the parties to the dispute. Mediation allows the parties involved to participate in and control the decisions regarding their dispute directly.

Prior to 1996, mediation in divorce proceedings was handled on an ad-hoc basis only. This allowed parties to voluntarily agree to modify their disputes out of court through private mediators. In August 1996, the 6th Judicial District initiated a pilot project to establish a court-ordered mediation program. Currently, mediation is available statewide. Plaintiffs and defendants still have the right to contact and utilize a mediator at any time.

The Iowa Supreme Court established a Mediation Study Group in June 1999, to explore the “value, cost, and requirements” of a court-annexed mediation program in family law cases. Court-ordered mediation allows the Courts to maintain control sending only selected cases rather than mandating all cases go to mediation. The cases targeted are those that failed to resolve their family law disputes within a reasonable time or 120 days after service of the original notice.

According to the Report, there are more than 200 mediation programs in the United States. Some States have statewide court-ordered mediation programs including California, Florida, Maine, Minnesota, Ohio, and Wisconsin. Iowa is among a number of States that authorize trial courts to order mediation in particular cases.

Iowa has no mediator certification system. However, the Report recommends that mediation should not be limited to lawyers. According to the Iowa Code of Judicial Conduct, judges are prohibited from acting as an arbitrator or a mediator. In order to ensure qualified mediators, proper training and continuing education credits should be ensured. Most state programs require a minimum of 40 hours of initial training for roster mediators.

CURRENT SITUATION

The National Center for State Courts reports that 85.0% to 90.0% of all divorce cases settle prior to the time mediation begins. This trend appears to be true in Iowa as well.

Since August 1996, the 6th Judicial District (Tama, Benton, Linn, Jones, Iowa, and Johnson Counties) has operated a court-ordered mediation program. The result of this program is less than 10.0% of all dissolution cases are actually ordered into court-ordered mediation. In addition, the program has dramatically decreased the number of temporary custody hearings by 60.0%.

The 6th Judicial District uses private mediators selected and compensated by the parties involved. The fee arrangements are private and not regulated by the Court. However, mediators are required to meet certain criteria to be a mediator.

The Report unanimously recommends that the Supreme Court adopt the proposed statewide mediation program model for family law cases set forth in the Report. The Report states the implementation of this program is expected to result in a reduction of parental conflict, an increase in compliance in the family law decree, an increase in the parties' responsibility, a better satisfaction with the legal process, a reduction in the family workload per case, a shorter duration from filing to trial, and a lower reoccurrence of litigated problems after final decree. The Report also states that noncustodial parents are more willing to assist in the care of the children beyond what the divorce decree states and it helps to promote better communication between the parents. A copy of the Report dated March 10, 2000, is available at the Legislative Fiscal Bureau.

CURRENT COURT CASES

The United States Supreme Court recently decided a case, *Troxel v. Granville*, regarding grandparent's visitation rights. The district court gave the grandparents visitation rights. However, the mother thought that the grandparents received too much visitation time with her children. The mother was willing to allow some visitation with the children, just not as much time as the Court had ordered. The Supreme Court decided that the Washington State statute violated the mother's substantive due process rights and the 14th Amendment.

Iowa has a similar case that was stayed until the U.S. Supreme Court decision came down; *Joe and Lois Santi v. Mike and Heather Santi*. A district court judge ruled that the Iowa statute is unconstitutional. The case has now been argued to the Iowa Supreme Court and is currently under advisement. The next filing date for the Iowa Supreme Court is July 5.

The difference between the Iowa case and the Washington case is that in the Washington case there was a divorce hearing in which the mother did not want the father's parents to have visitation

rights. The Iowa case concerns a married couple that does not want the father's parents to have contact with the children.

CURRENT LEGISLATION

In the 2000 Legislative Session, House File 683 was passed by the General Assembly. The Act addresses mediation services related to custody, visitation, and support of a child. The Act allowed district courts, at their own discretion, to order parties to participate in mediation in any dissolution of marriage case. The Act also required the Iowa Supreme Court to establish a dispute resolution program in family law cases and to prescribe rules for the mediation program. The Supreme Court required qualifications for mediators by January 1, 2001, and submitted a report to the General Assembly. The Act takes effect July 1, 2001.

In the 2001 Legislative Session, House File 678 was introduced and passed the House but failed to pass the Senate. The Bill required mediation in dissolution of marriage and other domestic abuse cases. The Bill would have required the Iowa Supreme Court to create a modeling parent agreement form to be used in establishing visitation provisions and the enforcement of the parenting agreement.

Attached is a history of related legislation enacted by the General Assembly on visitation and mediation rights. (**Attachment B**)

PILOT PROJECT

Presently, an \$80 fee and a court-ordered modification are required to change child custody. In Chapter 1092, 2000 Iowa Acts, a pilot project was authorized in the 7th Judicial District (Jackson, Clinton, Cedar, Scott, and Muscatine Counties) to provide concurrent jurisdiction between the juvenile and district courts in the case of modifying custody when there was a prior Section 598 order. This is an attempt to simplify the process.

The concurrent jurisdiction pilot project requires that the juvenile court judge make a custody determination in a dispositional or permanency order and set a hearing in thirty days for the purpose of establishing the child support obligation. A file stamped copy of the support order would then be presented to the district court judge for approval without hearing. Once approved, a copy of both orders would be filed in district court and enforced the same way as any other modification order. The project started September 1, 2000. The purpose of this project was to avoid duplication of litigation in child custody issues and to allow the parents to have legal representation at both steps of the process.

BUDGET IMPACT

The 6th Judicial District Mediation Program is funded primarily through grants. The current director of the Program estimates that a district-wide, court-ordered mediation program would require an annual budget of approximately \$75,000 per year. This would include a full-time district coordinator and a part-time secretary including benefits. (No office space was included in the cost projection.)

A fully developed statewide program with a coordinator and part-time secretary for each of the eight Judicial Districts would have an approximate annual cost of \$600,000. There are eight Judicial

Districts in the State of Iowa, which are divided into 14 electoral districts. (**Attachment A** shows the eight Judicial Districts and the 14 electoral districts). If a coordinator and secretary were provided for each of the Sub-Judicial Districts, the amount would be approximately \$1,050,000. The estimated annual cost to operate the Program in four districts would be approximately \$300,000.

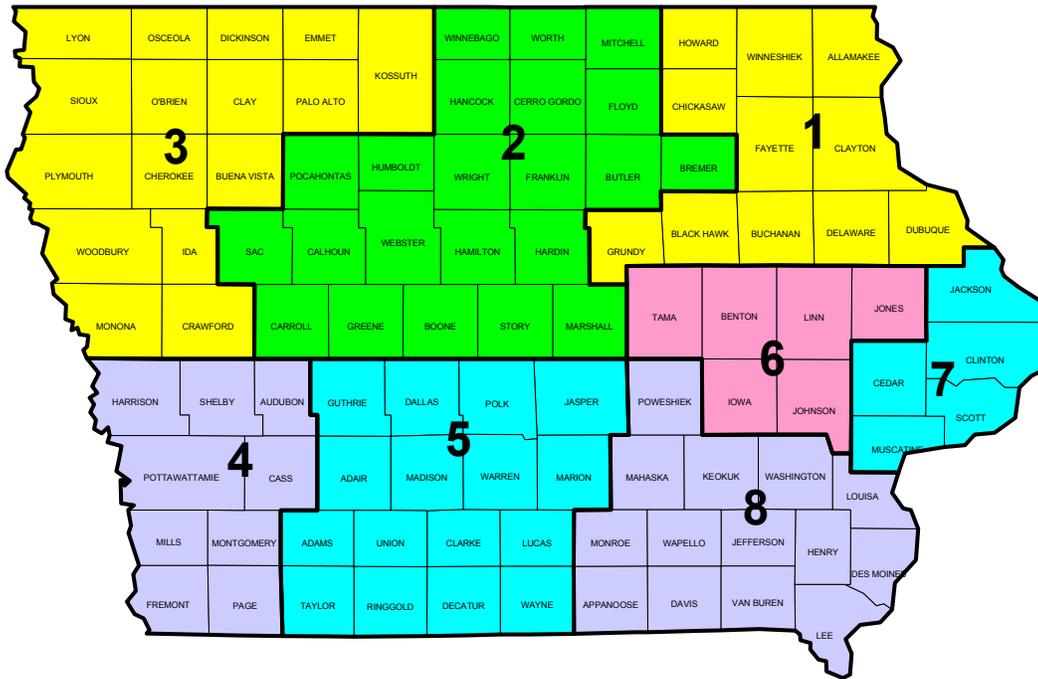
Mediators would be required to provide some pro bono services to those litigants who are indigent. Mediator's fees in Iowa vary from approximately \$40 per hour to \$100 or more per hour.

The Department of Human Service's Bureau of Collections has applied for and received federal Access and Visitation Grant funds for the past four years. The annual grant amount is \$90,000 and requires State matching funds of \$11,000. These funds have been used for various pilot projects throughout the State. A grant application for FFY02 is pending with the federal Office of Child Support Enforcement (OCSE).

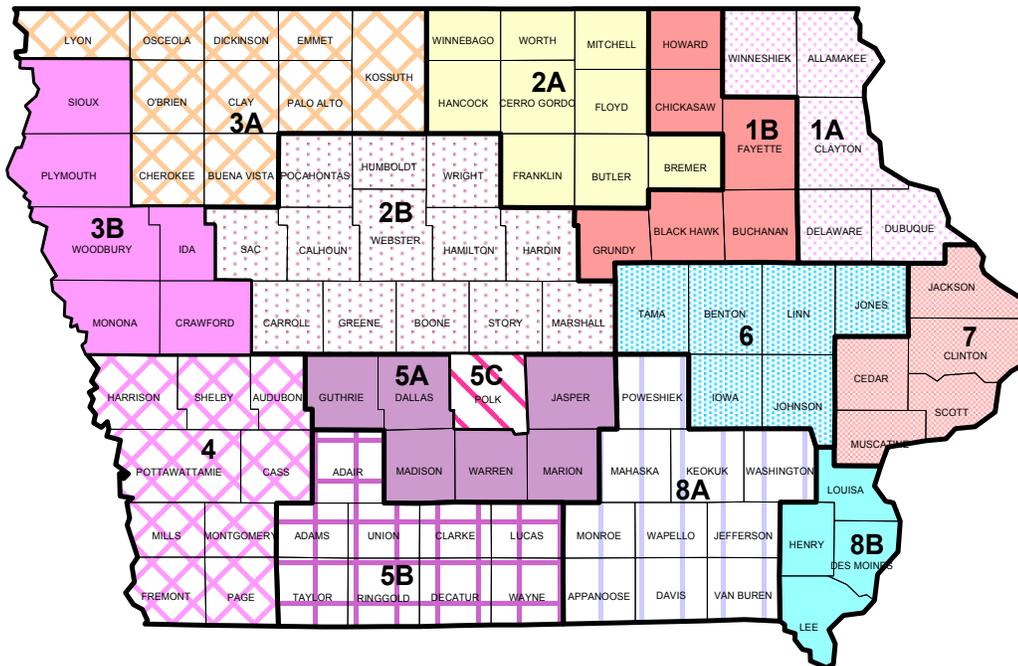
STAFF CONTACT: Jennifer Dean (Ext. 17846) Sam Leto (Ext. 16764)

Attachment A

Iowa Judicial Districts



Iowa Electoral Districts



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Attachment B

In 1995, the General Assembly approved a new Section to 598.7A and amended Section 598.419(2), Code of Iowa, concerning mediation in dissolution cases. Section 598.7A allowed a Court to require parties in a dissolution of marriage proceeding to participate in mediation as an attempt to resolve their differences. Section 598.41(2) provided Courts with similar authority in custody disputes. Both Sections allow the Court to order mediation only if there is no history of domestic abuse or no determination that harm is likely to result to either party or child. In addition, both Sections required the costs of mediation be paid in full or in part by the parties and taxed as court costs.

Section 598.7A was amended in 1996 and in 2000. The General Assembly adopted principles approved by a study committee organized by the Iowa Supreme Court examining family law mediation.

The following is a history of related legislation that has been enacted by the General Assembly over the last few years:

2000 Legislative Session

- HF 683 Child Custody, Visitation and Support Mediation
- HF 2388 Modification of Child Custody or Support Orders

1999 Legislative Session

- SF 193 Guardians Ad Litem for Children in Juvenile Court
- SF 367 Child Custody Jurisdiction and Enforcement
- HF 255 Child Custody Orders
- HF 633 Child Visitation Rights

1998 Legislative Session

- HF 677 Child Custody and Visitation
- SF 2313 Child Support, Spousal Support
- SF 2261 Grandparent/Great-grandparent Visitation